IN THE HIGH COURT OF BOMBAY AT GOA

Second Appeal No.116/2006

1. Smt. Maria Esperanca Luis
and others. ..... Appellants.

V/s.

1. Smt. Esmealda Rebello and others. ..... Respondents.

Mr. Sudin M. S. Usgaonkar, Advocate for the appellants.

Mr. S. G Dessai, Senior Advocate with Mr. S. Kalshaunkar, Advocate for the respondents.

CORAM : P.V. KAKADE, J.

DATE : 29TH NOVEMBER, 2006.

P.C. :

Heard the learned Counsel for both the parties. Perused the record..

2. The unsuccessful plaintiffs have preferred this appeal against the Judgment and Order passed by the Addl. District Judge, South Goa, Margao, dismissing the appeal filed by them and confirming the Judgment and Order passed by the Civil Judge, Sr Division, Margao dated 13.9.2004 in Regular Civil Suit No.40/1995, dismissing the plaintiffs' suit for

declaration and consequential reliefs against the defendants.

3. The plaintiffs filed the said suit alleging that the property known as “RUMODEM” or “RUMODEM XIRA” located at Nuvem, South Goa, is owned by them and the said property is surveyed under No.225 with various sub-divisions. It is alleged by the plaintiffs that a portion of the property is also surveyed under No.225/4 and the dispute arose with regard to the survey No.225/11. According to the plaintiffs, there was a family dispute between various members of the family and the suit property along with other properties remained neglected due to lack of proper supervision and, therefore, the defendants allegedly taking advantage of the situation, constructed a house in the suit property, without permission of the plaintiffs and without even obtaining licence from the Panchayat. It is further alleged that the defendants by misrepresentation, falsely included their names in the survey records as occupants in relation to the suit property and, hence, the suit came to be filed for declaration as well as injunction.

The defendants resisted the suit on various grounds, inter alia, denying the allegations made in the plaint and submitting that the identity of the suit property was not properly disclosed by the plaintiffs and according to the defendants, the plaintiffs wanted to grab the property of

the defendants as the plaintiffs were never the owners of survey No.225/11. The defendants also have given history as to how the defendants have become the owners of the property and sought dismissal of the suit.

4. The learned trial Court Judge, after hearing both the parties and on the basis of the available evidence, came to the conclusion that the plaintiffs failed to prove that they were the owners of the suit property surveyed under No.225/11 of Nuvem Village. It was further held that they were not entitled to perpetual injunction as prayed for and, as such, the suit came to be dismissed. The appeal was carried to the District Court. The learned Addl. District Judge, South Goa, Margao, after hearing the both the parties, concurred with the findings recorded by the trial Court and dismissed the appeal. Hence, the present appeal.

5. At the outset, it may be noted that the appellants have raised so called substantial questions of law, revolving around the issue of identity of the property, because it appears that the appellate Court at one stage, recorded a finding to the effect that the plaintiffs' cause was suffered by the vice of the provision of Order 7, Rule 3, as amended by the Bombay High Court holding that there is no compliance by the plaintiffs with the

first requirement of the description of the suit property with its boundaries or land description number. The learned Counsel for the appellants vehemently urged that this finding was uncalled for in view of the factual evidence on record of several other witnesses which was sufficient to identify the suit property at Survey No. 225/11. Therefore, dismissal of the suit on this point was illegal. On the other hand, the learned Senior Counsel for the respondents submitted that this aspect apart, the Courts below have concurrently held that the plaintiffs failed to prove title to the suit property for want of adequate evidence and as such, the concurrent findings are recorded to the effect that the plaintiffs failed to prove their ownership to the suit property and, therefore, no second appeal can lie against the concurrent findings of facts. In my considered view, this submission has ample force as can be seen from the findings recorded by both the Courts below. Even if it is assumed for a moment that the identification of the property is made on the basis of the record and there is no doubt in the minds of the parties regarding identity of the property, still the factual aspects of the evidence on record are sufficient to show that the plaintiffs failed to prove their ownership title to the suit property and as such, the Courts below have rightly held that the plaintiffs' case failed for want of adequate evidence in that regard.

6. The Apex Court in the case of **Kondiba Dagadu Kadam vs. Savitribai Sopan Gujar and ors.** (1999) 3 SCC 722 has reiterated the law in this regard to the effect that the concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under section 100 of the C.P. Code. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. This is more so, as can be seen from the present case that the evidence appears to have been properly appreciated by the Courts below with regard to the land of survey No.225/11 and, therefore, I am of the considered view that the findings recorded by the Courts below would brook no interference.

7. In the result, the appeal has no merit and stands dismissed with no order as to costs.

P.V. KAKADE, J.

ssm.